

BK 0460 PG 0593

STATE MS.-DESOTO CO.
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BK 460 PG 593
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Holcomb Dunbar, P.A.
P.O. Box 190
Southaven, MS 38671
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Doc. 903-064 Initials SDH

Prepared by and return to after recording:
Robert A. Chubb, Esq.
Hartman, Simons, Spielman & Wood, LLP
6400 Powers Ferry Road, N.W., Suite 400
Atlanta, Georgia 30339
Telephone: 770-955-3555

Cross Reference:
Book 433, Page 466
Book 440, Page 516
Desoto County Records

To the Chancery Clerk of DeSoto County, Mississippi:
The real property described herein is situated in the
Southeast ¼ of Section 29, Township 1 South, Range 6 West,
Judicial District of DeSoto County, Mississippi.

AMENDMENT TO EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND

THIS AMENDMENT TO EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND (the "**Amendment**") is made and entered into this 17th day of December, 2003, between BOLTON PROPERTIES, LLC, a Tennessee limited liability company having an office at 775 Ridge Lake Boulevard, Suite 100, Memphis, Tennessee 38120 ("**Bolton**"), HOME DEPOT U.S.A., INC., a Delaware corporation, having an office at 2455 Paces Ferry Road, Atlanta, Georgia 30339, Attention: Vice President-Real Estate Law Group ("**HD**"), and ORANGE GROVE UTILITIES, INC., a Mississippi corporation, having an office at 110 South Wilson Blvd., Gulfport, Mississippi 39532 ("**Orange Grove**").

WITNESSETH:

WHEREAS, Bolton declared that certain Easements with Covenants and Restrictions Affecting Land made by Bolton dated November 18, 2002, and recorded at Book 433, Page 466, and re-recorded at Book 440, Page 516, records of Desoto County, Mississippi (the "**ECR**") against certain real property located in Olive Branch, DeSoto County, Mississippi and described in said ECR as "Tract 2"; and

WHEREAS, Bolton remains the owner in fee simple of a portion of Tract 2, which portion is more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (the "**Bolton Parcel**"); and

WHEREAS, HD is the owner in fee simple of a portion of Tract 2 immediately adjacent to the Bolton Parcel, which portion is more particularly described on **Exhibit "B"** attached hereto and by this reference made a part hereof (the "**HD Parcel**"); and

WHEREAS, Orange Grove is the owner in fee simple of a portion of Tract 2 immediately adjacent to the Bolton Parcel and described in the ECR as "**Outparcel 2A**". The Bolton Parcel, the HD Parcel and the Outparcel 2A are herein collectively Tract 2 as described in the ECR and herein also referred to as the "**Parcels**" and each individually as a "**Parcel**"; and

WHEREAS, Bolton, HD and Orange Grove desire to amend and modify the ECR, on the further terms set forth herein. The terms Bolton, HD and Orange Grove shall be deemed to refer to such parties and the respective heirs, successors, grantees and assigns of such parties (individually "**Owner**" or collectively "**Owners**").

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, Bolton, HD and Orange Grove hereby agree as follows:

1. **Capitalized Terms.** Capitalized Terms utilized in this Amendment but not defined herein shall have the meanings attributed to such terms in the ECR.

2. **Storm Drainage and Detention Pond.** (a) Notwithstanding anything in the ECR to the contrary, the Owners agree that subject to the further terms of this Section 2 and Section 3 below, the Storm Drainage System (as defined in the ECR) on the HD Parcel and the Storm Drainage System on the Bolton Parcel and Outparcel 2A shall be separate and apart from each other.

(b) The Owners agree that neither the Owner of the Bolton Parcel nor the Owner of Outparcel 2A shall have the right to discharge surface water runoff from the Bolton Parcel or Outparcel 2A onto the HD Parcel or to tie into and use any Storm Drainage System now or hereinafter installed on the HD Parcel, except that (i) such Owners shall have the right to discharge surface water runoff from the Bolton Parcel and Outparcel 2A into the drainage ditch located in part on the HD Parcel and in part on the Bolton Parcel as more particularly located in the area shown as the "**Existing Drainage Ditch**" on **Exhibit "D"** attached hereto and by this reference made a part hereof (the "**Site Plan**"), and (ii) the portion of the driveway shown as the "**Main Driveway**" on the Site Plan which is upon the Bolton Parcel shall drain into the Storm Drainage System on the HD Parcel.

(c) The Owner of the HD Parcel shall have no right to discharge surface water runoff from the HD Parcel onto the Bolton Parcel or Outparcel 2A or to tie into and use any Storm Drainage System now or hereinafter installed on the Bolton Parcel or Outparcel 2A, except that (i) such Owner shall have the right to discharge surface water runoff from the HD Parcel into the Existing Drainage Ditch, and (ii) any surface water runoff onto the Bolton Parcel

from the portion of the Main Driveway on the HD Parcel due to any connections to such main Driveway by the Owner of the Bolton Parcel shall be permitted.

(d) Notwithstanding Sections 2(b) and (c) above, the Owner of the Bolton Parcel and the Owner of Outparcel 2A shall have the right to discharge surface water runoff from their respective Parcel onto the Parcel of the other (but not the HD Parcel) and to tie into or use any Storm Drainage System now or hereunder installed of the other (but not the HD Parcel) in accordance with Section 5(d) of the ECR.

(e) The Owner of the HD Parcel shall have no obligation or either maintain or contribute to the maintenance of Detention Basin A (as defined in the ECR) located partially on the Bolton Parcel and partially on Outparcel 2A. It being the understanding that the Owner of the Bolton Parcel shall be responsible for the same in accordance with Section 5(e) of the ECR. Further, as reference in Section 5(e) of the ECR to "Tract 2" shall be deemed to refer to the "Bolton Parcel."

(f) The ECR (including, without limitation, Sections 5(d) and (e)) shall be deemed amended by the foregoing provisions of this Section 2.

3. **Existing Drainage Ditch.** (a) Subject to reimbursement from the Owner of the Bolton Parcel as hereinafter provided, the Owner of the HD Parcel shall be responsible for the maintenance of the Existing Drainage Ditch and shall (directly or through a third party) so maintain and keep the same in good condition and repair. The Owner of the Bolton Parcel shall be responsible for 50% of the costs incurred in performing such maintenance and repair services (the "**Ditch Reimbursable Amount**"). The Owner of Outparcel 2A shall have no obligation to either maintain or contribute to the maintenance of the Existing Drainage Ditch.

(b) The Owner of the Bolton Parcel shall reimburse (or cause its tenants to reimburse) the Owner of the HD Parcel for such Ditch Reimbursable Amount not later than thirty (30) days after receipt of an invoice therefor. Any amounts not paid within such thirty (30) day period shall bear interest thereon from the due date at a rate equal to the lesser of (i) two percent in excess of the prime lending rate per annum charged by Citibank, N.A. (or its successor) for commercial loans of its most preferred commercial customers or (ii) the highest rate permitted by applicable law (the "**Interest Rate**"). Failure of the Owner of the Bolton Parcel to pay any such amount within such thirty (30) day period shall entitle the Owner of the HD Parcel to exercise the rights and remedies set forth in Section 10 of the ECR. Further, any such claim for such Ditch Reimbursable Amount, together with interest thereon as aforesaid, shall be secured by a lien on the Bolton Parcel and improvements thereon owned by the Owner of the Bolton Parcel, which lien shall be effective upon the recording of a notice thereof in the appropriate recording office of the county in which the Bolton Parcel is located.

(c) The Owner of the HD Parcel shall retain its records (including any invoices and receipts) relating to the Ditch Reimbursable Amount for not less than twenty-four (24) months. Upon reasonable prior written notice to the Owner of the HD Parcel, the Owner of the Bolton Parcel shall have the right, during the twenty-four (24) month period following the end of the calendar year for which the Ditch Reimbursable Amount is in question, to inspect and

audit (at such Owner of the Bolton Parcel's cost and expense) the Owner of the Bolton Parcel's records relating to such costs. Appropriate adjustments, with corresponding reimbursements or additional payments of such adjustments, as the case may be, shall be made with respect to errors in the computation of such Ditch Reimbursable Amount revealed by such inspection.

4. **Notices.** Section 16(b) of the ECR is hereby deleted in its entirety and the following is substituted in lieu thereof: Any notice by any party hereto shall be in writing and shall be sent by personal delivery, by receipted express courier service, sender paid, or by United States Certified Mail, Return Receipt Requested, postage prepaid, addressed to the party being notified at the address set forth below or at any other address which a party may from time to time hereafter designate to the other in writing:

If to HD: Home Depot U.S.A., Inc.
2455 Paces Ferry Road
Building C, 20th Floor
Atlanta, Georgia 30339
Attn: Vice President-Real Estate Law Group
Store No. 8469

With a copy to: Home Depot U.S.A., Inc.
877 Franklin Road, Suite 205
Marietta, Georgia 30067
Attn: Real Estate Manager
Store No. 8469

With an additional copy to: Hartman, Simons, Spielman & Wood, LLP
6400 Powers Ferry Road, N.W., Suite 400
Atlanta, Georgia 30339
Attn: Robert A. Chubb, Esq.

If to Bolton: Bolton Properties, LLC
775 Ridge Lake Boulevard, Suite 100
Memphis, Tennessee 38120
Attn: Steve Nelson

With a copy to: Walker Commercial Properties
871 Ridgeway Loop Road, Suite 107
Memphis, Tennessee 38120
Attn: John B. Walker

With an additional copy to: Wyatt, Tarrant & Combs, LLC
1715 Aaron Brenner Drive, Suite 800
Memphis, Tennessee 38120
Attn: Boyd L. Rhodes, Jr., Esq.

If to Orange Grove: Orange Grove Utilities, Inc.
110 South Wilson Blvd.
Gulfport, Mississippi 39532
Attn: Steven H. Day

With a copy to: Bordelon, Hamlin & Theriot
701 S. Peters Street, Suite 100
New Orleans, Louisiana 70130
Attn: Donald E. Theriot, Esq.

With an additional copy to: O'Charley's, Inc.
3038 Sidco Drive
P.O. Box 291809
Nashville, Tennessee 37229
Attn: Director of Development

With an additional copy to: Waller, Lansden, Dortch & Davis
2100 Nashville City Center
511 Union Street
Nashville, Tennessee 37219
Attn: J. Steven Kirkham, Esq.

Notice shall be deemed to be given as of the date postmarked on the letter when mailed, the date of deposit with the receipted express courier service or on the date of the personal delivery, as the case may be. The period in which a response to a notice must be given or taken, however, shall run from the date of receipt. Rejection, refusal to accept delivery or inability to deliver due to changed address of which no notice has been given shall be deemed receipt.

6. **Notice Statement.** This Amendment shall be deemed the Notice Statement required by Section 16 of the ECR as the same pertains to the transfer of the HD Parcel from Bolton to HD.

7. **Miscellaneous.** This Amendment and the easements, rights and restrictions created hereby shall be perpetual to the extent permitted by law. This Amendment may not be changed orally, but only by an agreement in writing signed by the parties hereto. The provisions of this Amendment shall run with the land and shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, successors, assigns, and the legal representatives of their estates and the easements, rights and restrictions granted herein shall be burdens upon and appurtenances to each of the Parcels in accordance with the provisions hereof and shall run with the title to the Parcels. This Amendment may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. This Amendment is to be governed by and construed in accordance with the laws of the State of Mississippi.

8. **Effect of Amendment.** All terms, conditions and provisions of the ECR not expressly amended or modified by this Amendment shall remain unchanged and in full force and

effect. The ECR as amended by this Amendment may not be modified in any respect whatsoever or rescinded, in whole or in part, except by a writing executed by Bolton, HD and Orange Grove.

(Signatures Commence on Next Page)

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the day and year first above written.

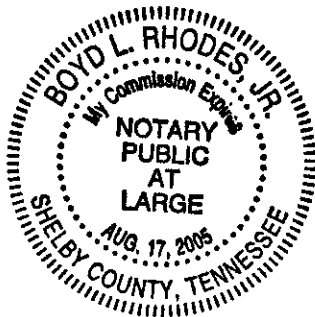
BOLTON:

BOLTON PROPERTIES, LLC,
a Tennessee limited liability company

By: *Charles E. Bolton*
Print Name: Charles E. Bolton
Title: Chief Manager

STATE OF TENNESSEE)
) S.S.
COUNTY OF SHELBY)

PERSONALLY appeared before me, the undersigned authority in and for the said county and state, on this 16 day of DECEMBER, 2003, within my jurisdiction, the within named CHARLES E. BOLTON, who acknowledged that he/she is a CHIEF MANAGER of BOLTON PROPERTIES, LLC, a Tennessee limited liability company and that for an on behalf of said limited liability company, and as its act and deed, he/she executed the above and foregoing instrument, after having been duly authorized by said limited liability company so to do.



Boyd L. Rhodes, Jr.
Notary Public
My Commission Expires: 8/17/05
[Notarial Seal]

(Signatures Continue on Following Page)

HD:

HOME DEPOT U.S.A., INC.,
a Delaware corporation

By: *Jeff Israel*
Jeff Israel, Esq., Director - Legal

STATE OF Georgia)
COUNTY OF Cobb) S.S.

PERSONALLY appeared before me, the undersigned authority in and for the said county and state, on this 16 day of December 2003, within my jurisdiction, the within named Jeff Israel, who acknowledged that he is a ~~Sr. Director Counsel~~ Legal of HOME DEPOT U.S.A., INC., a Delaware corporation and that for an on behalf of said corporation, and as its act and deed, he executed the above and foregoing instrument, after having been duly authorized by said corporation so to do.

Lindsay Henning
Notary Public
My Commission Expires: _____
[Notarial Seal]

(Signatures Continue on Following Page)



ORANGE GROVE:

ORANGE GROVE UTILITIES, INC.,
a Mississippi corporation

By: _____

Print Name: Steven H. DayTitle: Vice-President

STATE OF Mississippi)
) S.S.
COUNTY OF Harrison)

PERSONALLY appeared before me, the undersigned authority in and for the said county and state, on this 17th day of December, 2003, within my jurisdiction, the within named Steven H. Day, who acknowledged that he/she is a Vice President of ORANGE GROVE UTILITIES, INC., a Mississippi corporation and that for an on behalf of said corporation, and as its act and deed, he executed the above and foregoing instrument, after having been duly authorized by said corporation so to do.

Dorothy P. Smith
Notary Public
My Commission Expires: June 29, 2004
[Notarial Seal]

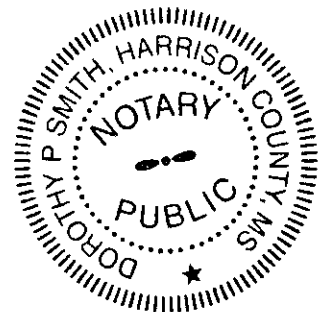


Exhibit "A"**Bolton Parcel**

A parcel of land being located in the Southeast 1/4 of Section 29, Township 1 South, Range 6 West, Desoto County, Mississippi, said parcel being a part of that property described in Deed Book 0437 page 0054 on file in the Desoto County Chancery Clerk's Office and located within a parcel shown as Future Development on the recorded plat of The Crossings at Olive Branch on file in the Chancery Clerk's Office of said county and state, said parcel being more particularly described as follows:

Commence at a found iron rod at the northeast corner of Lot 6 of The Crossings at Olive Branch as per recorded plat in the Chancery Clerk's Office of said county and state, said point being the POINT OF BEGINNING, and run along the north line of said Lot 6 N87°45'30"W for 291.77 feet; thence run along the west line of said Lot 6 S41°14'19"W for 161.03 feet to a found chiseled 'x' in an existing sidewalk, said point being located on the east right-of-way of Craft-Goodman Frontage Road; thence run along the east right-of-way of Craft-Goodman Frontage Road along a curve to the right to the southernmost corner of Lot 7 of the Crossings at Olive Branch, as per recorded plat in the Chancery Clerk's Office of said county and state, said curve having a radius of 4990.00 feet, an arc length of 46.13 feet, and included angle of 00°31'47", a chord length of 46.13 feet, and a chord bearing of N47°00'58"W; thence run along the south line of said Lot 7 N41°14'22"E (N38°59'28"E per recorded plat for Lot 7) for 103.48 feet; thence continue along the south line of said Lot 7 N41°51'23"E (N39°36'29"E per recorded plat for Lot 7) for 51.13 feet; thence continue along the south line of said Lot 7 along a curve to the right, said curve having a radius of 91.00 feet, an arc length of 32.68 feet, an included angle of 20°34'44", a chord length of 32.51 feet, and a chord bearing of N57°50'15"E (N55°35'21"E per recorded plat for Lot 7); thence continue along the south line of said Lot 7 N09°08'15"W (N11°23'09"W per recorded plat for Lot 7) for 49.06 feet; thence run along the east line of said Lot 7 N43°04'18"W (N45°19'12"W per recorded plat for Lot 7) for 274.29 feet; thence run along the north line of said Lot 7 S46°58'21"W (S44°43'27"W per recorded plat for Lot 7) for 223.49 feet to a found iron rod on the east right-of-way of Craft-Goodman Frontage Road; thence run along the east right-of-way of Craft-Goodman Frontage Road along a curve to the right to a set iron rod, said curve having a radius of 4990.00 feet, an arc length of 131.68 feet, an included angle of 01°30'43", a chord length of 131.67 feet, and a chord bearing of N42°16'30"W; thence run N46°45'16"E for 93.89 feet; thence run N37°24'03"E for 72.11 feet; thence run N24°38'21"E for 63.05 feet; thence run N16°59'47"E for 75.17 feet; thence run N08°01'38"E for 44.80 feet; thence run N19°29'34"E for 61.56 feet; thence run N02°13'16"E for 66.48 feet to a set iron rod; thence run N89°54'15"E for 469.13 feet to a set iron rod; thence run N00°05'45"W for 21.01 feet to a set iron rod on the north line of said Future Development parcel on the recorded plat of The Crossings of Olive Branch; thence run along the north line of said Future Development Parcel S87°58'48"E for 100.75 feet to a found concrete monument at the northeast corner of said Future Development parcel; thence run along the east line of said Future Development parcel, said east line also being the west line of Lot 1 of The Crossings at Olive Branch for the following three (3) calls: run S02°14'52"W for 319.22 feet to a chiseled crow's foot in a concrete slab; thence run S87°45'08"E for 16.00 feet to a chiseled crow's foot in a concrete slab; thence run S02°14'52"W for 367.26 feet back to the POINT OF BEGINNING. Said parcel contains 363,533 square feet or 8.35 acres, more or less.

Exhibit "B"**HD Parcel**

A parcel of land being located in the southeast $\frac{1}{4}$ of Section 29, Township 1 South, Range 6 West, Desoto County, Mississippi, said parcel being part of that property conveyed to Bolton Properties, LLC, described in Deed Book 0437, Page 0054 on file in the Desoto County Chancery Clerk's Office and located within a parcel shown as Future Development on the recorded plat of The Crossings at Olive Branch on file in the Chancery Clerk's Office of said county and state, said parcel being more particularly described as follows:

Commence at a found iron rod at the northeast corner of Lot 6 of The Crossings at Olive Branch as per recorded plat on file in the Chancery Clerk's Office of said county and state and run along the north line of said Lot 6 N $87^{\circ} 45' 30''$ W for 291.77 feet; thence run along the west line of said Lot 6 S $41' 14' 19''$ W for 161.03 feet to a found chiseled "x" in an existing sidewalk, said point being located on the east right-of-way of Craft-Goodman Frontage Road; thence run along the east right-of-way of Craft-Goodman Frontage Road along a curve to the right to a set iron rod to and for the POINT OF BEGINNING, said curve having a radius of 4990.00 feet, an arc length of 501.82 feet, a chord length of 501.61 feet, a chord bearing of N $44^{\circ} 24' 00''$ W, and an included angle of $05^{\circ} 45' 43''$. Thence continue along the east right-of-way of Craft-Goodman Frontage Road along a curve to the right to a found chiseled "x" in an existing sidewalk, said curve having a radius 4990.00 feet, an arc length of 256.13 feet, a chord length of 256.10 feet, a chord bearing of N $40^{\circ} 02' 55''$ W, and an included angle of $02^{\circ} 56' 27''$; thence continue along the east right-of-way of Craft-Goodman Frontage Road N $38^{\circ} 34' 41''$ W for 629.12 feet to a found iron rod at the northwest corner of a parcel shown as Future Development on the recorded plat of The Crossings at Olive Branch; thence run along the north line of said Future Development parcel N $89^{\circ} 54' 15''$ E for 770.84 feet to a found iron rod; thence continue along the boundary line of said Future Development parcel S $01^{\circ} 31' 43''$ W for 231.89 feet to a found iron rod; thence continue along the north line of said Future Development parcel S $87^{\circ} 58' 48''$ E for 451.63 feet to a set iron rod; thence leaving the north line of said Future Development parcel run S $00^{\circ} 05' 45''$ E for 21.01 feet to a set iron rod; thence run S $89^{\circ} 54' 15''$ W for 469.13 feet to a set iron rod; thence run S $02^{\circ} 13' 16''$ W for 66.48 feet; thence run S $19^{\circ} 29' 34''$ W for 61.56 feet; thence run S $08^{\circ} 01' 38''$ W for 44.80 feet; thence run S $16^{\circ} 59' 47''$ W for 75.17 feet; thence run S $24^{\circ} 38' 21''$ W for 63.05 feet; thence run S $37^{\circ} 24' 03''$ W for 72.11 feet; thence run S $46^{\circ} 45' 16''$ W for 93.89 feet back to the POINT OF BEGINNING. Said parcel contains 319,423 square feet or 7.33 acres, more or less.

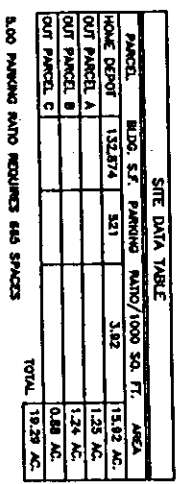
Exhibit "C"**Outparcel 2A**

Final plat of Lot 7 of The Crossings at Olive Branch, recorded in Deed Book 81 at Page 41 and 42 in the Office of the Chancery Clerk, Desoto County, Mississippi, *IN S 29-TIS-R6W*

More particularly described as:

Commencing at the southwest corner of the Chili's Parcel, Lot 6 of The Crossings at Olive Branch, as recorded in Deed Book 382, at Page 411, Desoto County, Mississippi; thence along a curve to the left having a radius of 4990.00 and a chord bearing of North 49° 16' 00" West and a chord length of 46.02 feet to the point of beginning of the herein described parcel; thence along a curve to the left having a radius of 4985.17 feet and a chord bearing of North 47° 08' 24" West and a chord length of 324.02 feet; thence run North 44° 43' 27" East, 223.49 feet; thence run South 45° 19' 12" East, 274.29 feet; thence run South 11° 23' 09" East, 49.06 feet; thence run along a curve to the left having a radius of 91.00 feet and a chord bearing of South 55° 35' 21" West and a chord length of 32.51 feet; thence run South 39° 36' 29" West, 51.13 feet; thence run South 38° 59' 28" West, 103.48 feet to the POINT OF BEGINNING, containing 1.58 acres, more or less.

DRAWING DATE 04.21.03
POSTED 04.21.03



**HAINES, GIPSON
& ASSOCIATES, INC.**
CONSULTING ENGINEERS
1550 NORTH BROWN ROAD, SUITE 100
LAWRENCEVILLE GEORGIA 30043
770-491-7550 FAX 770-491-7750

NO.	BY

EXHIBIT "D"
SITE PLAN